IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04-3-2002

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

O.A.No.18 of 2002

in

ELECTION PETITION NO.1 of 2000

T.T.V.Dhinakaran .. Petitioner

-vs-

1. P.Selvendran
2. Selvam P.
3. Mansoor Alikhan
4. P.R.Jegannathan
5. K.Elamurugan
6. Kandasamy K.
7. Kasimayan V.
8. Kalichamy V.
9. Sadayandi A.
10.Saravanapandian
11.Segar S.R.
12.Palanisamy
13.Pandiammal
14.Poovaiah S.
15.Rajagopal C.
16.Returning Officer,
No.25 Periyakulam Parliamentary
Constituency, Periyakulam. .. Respondents

This application is filed to reject the Election Petition 1/2000 as it does not furnish any cause of action and is also totally lacking material facts within the meaning of Sec.83(1)(a) of the Representation of People's Act.
For Petitioner : Mr.B.Kumar, Sr.Advocate,
for Mr.A.Jenasenan
For Respondents: Mr. T.R.Rajagopalan,Sr.Advocate
for Mr.P.Wilson
: ORDER

An Election Petition is filed by the first respondent herein in Election Petition No.1 of 2000, challenging the

election of the petitioner herein and seeking a declaration that the election of the petitioner herein from No.25 Periyakulam Parliamentary Constituency is null and void and to set aside the same on the grounds that (i) under S.100(1)(a) of the Representation of People Act, 1951 the returned candidate was not qualified to be chosen to fill the seat; (ii) under S.100(1)(d)(i) of the Representation of People Act, 1951, the result of the election of the petitioner herein has been materially affected by the improper acceptance of his nomination; (iii) under S.100(1)(d)(iv) of the Representation of People Act, 1951, there is non compliance of provisions of Constitution or any rules or orders made under the Act; and (iv) the petitioner herein should have been disqualified under S.8(1)(e) read with S.100(1)(a) of the Representation of People Act, 1 951, and to declare that the first respondent herein has been duly elected from No.25 Periyakulam Parliamentary Constituency.

2. During the pendency of the main election petition, the first respondent therein and the petitioner herein has filed the instant application in O.A.No.18 of 2002 seeking rejection of the main election petition, as it does not furnish any cause of action and is totally lacking material facts within the meaning of S.83(1)(a) of the Representation of People's Act.

3. The averments in the affidavit filed in support of the application can briefly be stated as follows:

It is averred in the main election petition in para 5 that the petitioner herein has acquired allegiance or adherence to foreign State viz. Republic of Singapore. The thrust of the said allegation is that by a process of acquisition, he has acquired allegiance or adherence to a foreign State. In support of this serious allegation, there is no material facts mentioned in the main elect ion petition. What is stated in the main petition is a copy of the memo of appeal preferred by the petitioner herein before the Appellate Board constituted under Foreign Exchange Regulation Act. This does not and cannot mean acquisition of allegiance or adherence. The allegations made in paragraph 9 of the main petition that the petitioner herein had applied for and granted by the Singapore authorities in January 1995, the status of Permanent Resident of Singapore; that this was subject to local laws of Singapore State; that the status of Permanent Resident is subject to the rights and liabilities, arising out of Singapore laws viz. Immigration Act and Companies Act; and that by such a permanent resident status in Singapore, the petitioner herein is clearly under an acknowledgment of allegiance or adherence to the Foreign State, thus incurring the disqualification for Membership of either of House of Parliament are totally lacking material facts. Firstly, it lacks in material facts viz. What are the rights and liabilities of a Permanent Resident Status holder in Singapore?. The first respondent herein seeks to equate the permanent Resident status as "Acquisition" of allegiance or adherence to a foreign State. The basic material facts required are what are the rights and

liabilities following from or referable to a person having permanent resident rights in Singapore; and how those rights and liabilities that attach to a permanent resident of Singapore could be equated to or is allegiance or adherence to a foreign State. Without these material facts, it is impossible for the first respondent herein to meaningfully reply to the allegations in paragraph 9. Nor is it possible to conclude the basic premise that getting permanent resident status ipso facto means allegiance or adherence to a foreign State. Secondly, the allegations regarding the rights and liabilities arising out of the said local laws of Singapore lack totally material facts. What are the laws of Singapore, is not mentioned in the main petition. So also, how those laws are made applicable to a Permanent Resident and under what circumstances and conditions are not mentioned. It is also not mentioned how those laws or the provisions in those laws amount to acknowledgement of allegiance or adherence to a Foreign State so as to amount to disqualification within the meaning of Article 102 of the Constitution of India. It appears to be the requirement of law that if reliance is placed on any foreign law, it must specifically be pleaded and quoted as the foreign law itself amounts to a material fact. This Hon'ble Court cannot take judicial notice of any foreign law. Therefore, the main election petition lacks cause of action. The first premise that the disqualification by means of allegiance or adherence to a foreign State is by acquisition is an impossible concept, and one that is unknown to law, and the same cannot possibly exist. No process by which there could be an acquisition of allegiance or adherence to a foreign State is either mentioned or pleaded in the main petition. The second premise is acknowledgement of allegiance or adherence. The word "OR" used denoting the disjunctive itself renders the main petition vague and is a failure to furnish the exact fact and material fact. It appears to be that allegiance is one concept, and the adherence is entirely another. The ingredients of both are not the same. Hence, it cannot be averred that by acquisition, the petitioner herein has acknowledged allegiance or adherence to a foreign State. This vagueness flows from the lack of material fact. It is averred in paragraph 11 that this petitioner "in being a Director of Dipper Investments Ltd. Godfrey Resources and Benjan Tree is governed by UK Company Laws.... Being the Director of the above said Company he is under an acknowledgement of an allegiance or adherence to a foreign State under Art.102(1)(d) of the Constitution". The vagueness and lack of particulars are also too clear in the said paragraph. How being a Director of a Company in UK would, in law, amount to acknowledgement of allegiance or adherence to a foreign State so as to amount to a disqualification. Firstly, what are the rights and liabilities of a Director by laws of UK governing such Directorship of the Company is not averred in the main petition. Secondly, the laws of UK would constitute a material fact, that requires to be

pleaded. Thirdly, it is not stated how there had been any instance of adherence to any such law in the first place by the petitioner. These material facts are required to be pleaded. Likewise, the allegation in para 13 of the main petition that he had suffered an imposition of penalty by the proceedings of the Special Director, Enforcement Directorate as an adjudicating authority also lacks material facts. The disqualification under S.8(1)(e) of the Representation of People Act 1951 clearly mentions that a person must be convicted by court of competent jurisdiction i.e. a person must have been convicted after lawful charge and a lawful trial. Adjudication proceedings or the orders passed thereunder are not convictions in a criminal case. It has been held by this Hon'ble Court that adjudication proceedings are merely civil actions and no such thing viz. mens rea or guilty intention is either required to be pleaded or proved. The averments in para 14 of the main petition also lack material facts. The registration of the petitioner as a voter in the voters list of Mylapore Constituency has become final. There is no averment of illegality or irregularity attendant upon such registration. There could not be an adjudication of the aspects raised in paragraph 14 of the main petition without all necessary parties being impleaded in the petition. Thus, the main election petition which lacks material facts and which does not furnish any cause of action is liable to be rejected.

4. The first respondent herein, who is the petitioner in the election petition has contested the application with the following averments in his counter:

The petitioner had failed to notice the vital distinction between material facts and material particulars. As held in several decisions of the Supreme Court, material facts and material particulars certainly come out to two different things. Material facts are those facts which constitute cause of action. While the failure to plead material facts is fatal to the election petition, the absence of material particulars can be cured at a later stage by way of an appropriate amendment. For the purpose of considering a preliminary objection, the averments in the petition should be assumed to be true and the Court has to find out whether those averments disclose a cause of action or a triable issue as such. If the Election Petition as such discloses a cause of action which if unrebutted could void the election, the provisions of Order VII Rule II C.P.C. cannot be invoked in such a case. The case of the first respondent herein is that the petitioner, the returned candidate, had suffered disqualification of membership under Article 102(1)(d) of the Constitution, as he is under an acknowledgement of allegiance or adherence to a foreign State. This is the material fact pleaded by the first respondent constituting a cause of action and as such, a triable issue in the election petition, which pervades the main petition. If this material fact is not rebutted, then the election of the petitioner herein shall stand void. Whatever that would become necessary to establish the said material fact

can only constitute material particulars. Most of the material particulars have already been pleaded in the main petition, and documents relied upon by the first respondent have also been filed along with it. If some more documents are necessary to complete the material particulars, it can always be done at any stage of the proceedings. The copy of the memorandum of appeal preferred by the petitioner herein before the Appellate Board under the Foreign Exchange Regulation Act is mentioned as a material particular to prove the admitted material fact that the petitioner herein, by virtue of his acquiring a permanent resident status and being a director of certain companies in Singapore, owes an allegiance or adherence to a foreign state. In the said memorandum of grounds, the petitioner had categorically stated that he is a non resident Indian having also acquired a permanent resident status which certainly entails certain consequence of being bound by the laws of Singapore. Up to the sentence ending with "incurring the disqualification of Membership of either House of Parliament" in para 4 of the affidavit, the same extracts material facts pleaded by the first respondent in the main petition. The rest of the averments in para 4 of the affidavit can only be material particulars. The said material fact constituting the cause of action for disqualifying the petitioner has to be proved by material particulars, most of which have been referred to and filed along with the main petition. The application form for Permanent Resident Status and the conditions prescribed therein, the extract of the Registrar of Companies, Singapore, all go to prove the material fact pleaded by the first respondent with regard to the allegiance or adherence to a foreign state. As regards the provision of law applicable to the petitioner herein consequent upon his acquisition of permanent resident status, the same can only be material particulars which can always be relied upon by the first respondent herein by referring to the provisions of the Singapore Companies Act. The relevant provisions of the Singapore Companies Act cannot constitute material facts. For the purpose of finding out material fact and triable issue, this Hon'ble Court is entitled to find out the nature of the provisions of the Singapore laws that will become applicable to any person holding a permanent resident status in Singapore as well as any person who is a director of a company established in Singapore under the provisions of the Companies Act. Such examination will certainly not amount to administering the foreign laws by an Indian Court. The reliance of any foreign law would amount to a material particular, but not a material fact, since mere reference of a provision of foreign law by itself will not constitute material facts. It can only be in support of a material fact. The truth or otherwise of the pleadings taken in the Election Petition constituting a material fact cannot be gone into, and that has to be established only at the time of trial. The petitioner herein has failed to appreciate the difference between the material facts and material particulars. As regards

the petitioner being a director of certain companies in U.K., it has been specifically stated that the petitioner comes under the purview of U.K. Company Laws and whatever reasons that have been stated in this counter affidavit as regards the petitioner being a permanent resident of Singapore and being a director of certain companies in Singapore will mutates mutandis apply to the petitioner being a director of U.K. Companies. By being a director of a foreign company and bound by the company laws of that country which imposes rights and liabilities and also penalties, the petitioner becomes clearly bound to abide by those provisions of foreign laws. To what extent the petitioner is bound is irrelevant so long as the petitioner is bound by certain provisions of foreign laws on account of the material facts that he owes allegiance or adherence to the laws of a foreign State. Thus, no election petition can be dismissed on the ground that it lacks all the material particulars supporting the material facts pleaded. Many of the documents establishing the allegiance or adherence to foreign laws have already been referred to and filed along with the main petition. The instant application has been filed only to delay the trial and disposal of the main petition. Therefore, this application may be dismissed with exemplary costs.

5. Both sides did not adduce any evidence both oral and documentary.

6. The point that would arise for determination in this original application is,

"whether the election petition filed by the first respondent herein is liable to be rejected on the ground that it does not furnish any cause of action and is totally lacking in material facts within the meaning of S.83(1)(a) of the Representation of People's Act?"

7. As seen above, the first respondent herein has challenged the election of the petitioner herein and sought a declaration that the election of the petitioner herein from No.25 Periyakulam Parliamentary Constituency is null and void and to set aside the same on the grounds that (i) under S.100(1)(a) of the Representation of People Act, 1951 the returned candidate was not qualified to be chosen to fill the seat; (ii) under S.100(1)(d)(i) of the Representation of People Act, 195 1, the result of the election of the petitioner herein has been materially affected by the improper acceptance of his nomination; (iii) under S.100(1)(d)(iv) of the Representation of People Act, 1951, there is non compliance of provisions of Constitution or any rules or orders made under the Act; and (iv) the petitioner herein should have been disqualified under S.8(1)(e) read with S.100(1)(a) of the Representation of People Act, 1951, and to declare that the first respondent herein is a duly elected candidate from the said constituency.

8. Pending proceedings in the main election petition, the first respondent therein has moved the instant application seeking rejection of the main election petition No.1/2000 on the

grounds that it did not furnish any cause of action and also it lacks in material facts with the meaning of S.83(1)(a) of the Representation of People's Act.

9. At the outset, it has to be pointed out that what are to be decided at this stage is as to whether the main election petition warrants an order of rejection by this court on the ground of non furnishing of cause of action and lack of material particulars within the meaning of S.83(1)(a) of Representation of People's Act, as put forth by the petitioner herein.

10. Arguing for the petitioner/first respondent, the learned Senior Counsel Mr.B.Kumar would submit that the petitioner was elected as a Member of Parliament in Periyakulam constituency in the general election for Lokh Sabha held in August 1999 with a very large margin; that the first respondent has filed the election petition seeking a declaration that the election of the petitioner/first respondent was null and void and to set aside the same alleging that he was not qualified under S.100(1)(a) of the Representation of People Act 1951 to be chosen to fill the seat as the returned candidate, and his election has been materially affected by the improper acceptance of his nomination and for the non compliance of provisions of the Constitution and the provisions under S.100(1)(d)(iv) of the Representation of People Act, 1951, and he has been disqualified under S.8(1)(e) read with S.100(1)(a) of the Representation of People Act, 1951; that the said election petition has got to be rejected, since it does not furnish the cause of action and totally lacks in material facts within the meaning of S.83(1)(a) of the Representation of People Act; that according to S.83(1)(a) of the Act, the election petition should contain concise statement of material facts, on which the election petitioner relied; that said provision is mandatory; that when the election petition does not contain material facts, disclosing the cause of action, the said election petition has got to be rejected outright; that no evidence could be permitted to be let in where the material facts have not been averred in the election petition; that material facts and material particulars are different; that the material facts are those facts constituting the ingredients necessarily to be averred and proved to complete the cause of action, while the material particulars are those which give finishing touch to the basic contours of a picture already drawn to make it full of details; that the failure to give even a single material fact is fatal to the election petition, whereas the deficiency in pleading material particulars could be permitted to be supplied later by way of an amendment of the election petition; that the election of the petitioner is being challenged in the election petition stating that the petitioner is a permanent resident status holder in Singapore; that he is a Director of a Company by name Adventure Holding in Singapore and three companies in United Kingdom; that the election petitioner has filed certain documents and xerox copies

along with the election petition; that it is averred in the election petition that the permanent residential status of the petitioner herein is subject to the local laws of Singapore viz. Immigration Act and Companies Act of Singapore, and by holding permanent status of Singapore, the petitioner/first respondent was clearly under acknowledgement of allegiance or adherence to a foreign State and this is a disqualification for membership of Parliament; that it is also averred that the petitioner/first respondent being the Director of three Companies in U.K., he was under the acknowledgement of allegiance or adherence to a foreign State, and hence it has be come necessary to consider what is meant by allegiance to a foreign State and adherence to a Foreign State; that the allegiance to a foreign State is different from adherence to a foreign State; that "adherence" under Article 102 means that a person must follow or hold or maintain loyalty steadily and consistently to a State; that the decision of this court in HAJA SHERIFF VS. STATE reported in AIR 1985 MADRAS 55 is not applicable to the present facts of the case, since in that case the court on all proved facts came to the conclusion that he was paid a remuneration out of the Turkish National Fund, and he was holding loyalty to the Republic of Turkey which amounted to the adherence to the State of Turkey, and thus found him disqualified from being a member of the Legislature of the State; that from the said decision, it would be clear that adherence would require a close association with a foreign State; that insofar as the allegiance was concerned, it is such natural or legal obedience which every subject owes to his country; that the obligation of fidelity which the individual owes to the government or to the sovereign under whom he lives in return for the protection he receives, and thus the allegiance appears to require a status equivalent to that of a citizen of a country, so that by virtue of it, he must give allegiance to the State and receive protection from it therefor; and that in the light of the above decision of what is relevant by allegiance or adherence, the averment contained in the election petition cannot be said to have contained necessary material facts.

11. Added further, the learned Senior Counsel that the election petitioner has relied on document No.6, a declaration given in the memorandum of appeal against the decision of the Adjudicating Authority under Foreign Exchange Regulation Act filed before the Foreign Exchange Appellate Board to show that the petitioner/first respondent has described himself as a Non-resident Indian within the meaning of the provisions of FERA, and he is a Director of the Company Adventure Holding and other Companies in U.K., and thereby under acknowledgement of allegiance or adherence to the foreign State; that the allegations in the election petition on the face of it totally lack material facts; that it is not mentioned what are the rights and liabilities of a permanent resident holder of Singapore; that it was only if those rights and liabilities that attaches itself to a permanent resident of Singapore are mentioned, it could then

be seen if such rights and liabilities or privileges would amount to allegiance or adherence within the meaning of Art.102 of the Constitution; that without these material facts and ingredients, the inference that the permanent resident status would mean allegiance or adherence to a foreign State could never be drawn; that in the light of the decisions in Haja Sheriff's case, the rights and obligations of a permanent resident or a Director must be of such a nature to show the connection with the State of Singapore or U.K.; that without those, there could not be adherence to the foreign State; that it would be impossible to contend that a commercial venture by being a Director of a Company could ever amount to a relationship with the State or to perform the duties on behalf of a State; that the whole of the election petition was about the application of laws of Singapore, which the election petitioner says Immigration Act of Singapore and its Companies Act; that it would undoubtedly be a material fact in the context of the election petition to say what is Immigration Act or Companies Act of Singapore; that it must be specifically pleaded as a material fact what this so called Immigration Act and Companies Act say about a permanent resident rights holder of Singapore; that if these two acts confer some privilege or impose obligations or duties, it must be specifically pleaded, and it must also be pleaded how those privileges of a permanent resident holder gets or duties or obligations imposed on him was inconsistent with his being a citizen of India or amount to allegiance or it amounts to adherence to a foreign State; that even if any one of the above aspects is not pleaded, it would amount to lack of material fact; that it is pertinent to note that the election petition does not contain any pleading on any one of the above aspects, and thus it totally lacks material facts; that this is more so as foreign law itself required to be pleaded as a material fact; that the Apex Court in Sonia Gandhi's case reported in JT 2001 (7) SC 629 has settled the proposition that the Indian courts cannot take judicial notice of any foreign law, and the foreign law itself therefore amounts to material fact, which has got to be pleaded, and thus, the present election petitioner has not pleaded any foreign law, and hence the petition incurably lacks material facts, and therefore is liable to be rejected; that while the election petitioner has alleged that the elected candidate was disqualified on account of acknowledgement of allegiance or adherence to a foreign State, such an inference cannot be drawn unless the material facts from which such an inference can be drawn, are stated in the petition; that the Apex Court in Sonia Gandhi's case has held that the reproduction of the material part of the averment of the expression from Article 102 of the Constitution would not be sufficient, but the material facts wherefrom such inference might follow have to be necessarily stated; that the said decision of the Apex Court applies to the facts of the case on hand; that as regards the allegations of disqualification pleaded under S.8(1)(e) of the Act, it lacks

material particulars, and apart from that, it cannot constitute a cause of action; that S.8(1) of the Representation of People Act clearly states that "where a person convicted of an offence punishable under Foreign Exchange Regulation Act, 1973", and thus there must have been a conviction which would mean that it must be after a lawful charge followed by a lawful trial and punishment being given for the offence; that the election petition does not mention that the elected person was prosecuted for any offence under the FERA nor does it say that he was convicted thereunder, and thus without those material averments S.8(1)(e) of the Act could not be applied, and hence the election petition is liable to be rejected on that ground.

12. It is further argued by the learned Senior Counsel that the penalty imposed by the Special Director in an adjudication proceedings was not in a criminal trial; that the Hon'ble Supreme Court interpreting the Foreign Exchange Regulation Act itself in the decision reported in AIR 1996 SC 1100 (Director of Enforcement Vs. MCTM Corporation) has held that the adjudication proceedings did not amount to conviction for an offence; that they are only civil contravention; that no mens rea was required to be proved, and thus the averments that imposition of penalty must be deemed to be a disqualification under S.8(1)(e) of the Act could never be countenanced; that the next allegation that the petitioner's name has been wrongly entered in the electoral roll and the certified copy of the voters list was illegal and void; that these allegations cannot be examined by this court sitting as an Election Court; that this proposition was laid down by the Constitution Bench of the Apex Court reported in AIR 1974 (3) SCC 415 (Hariprasad Mulshahar Trivedi Vs. B.V.Raju); that the said decision was followed by the Supreme Court in a case reported in JT 2001 (7) SC 629; that in the aforesaid decision, the Constitution Bench has decided the issue directly and clearly, and hence no other Supreme Court judgment of the lesser number of Judges could reach a contrary or a different view that which is laid down by the Constitution Bench; that S.36(7) of the Representation of People Act provides that for the purposes of this Section, a certified copy of an entry in the electoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a disqualification mentioned in Sec.16 of the Representation of People Act 1950; that the certified copy of the voters list is statutorily recognized as a conclusive evidence, and hence it would be futile to challenge the same in the election petition; that S.36(7) itself points out that only under one circumstance, the entry in the electoral roll could be challenged; that the condition is where there is disqualification within the meaning of Sec.16 of the Representation of People Act 1950; that Sec.16 of that Act reads that a person shall be disqualified for registration in an electoral roll if he is not a citizen of India

or is of unsound mind and stands so declared by a competent court or is for the time being disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections; that it is not disputed that the copy of electoral roll shows the petitioner/first respondent as the voter in Mylapore Constituency, which cannot also be challenged on any one of the grounds specified under S.16 of the Representation of People Act, 1950, and hence the allegations seeking to challenge the voters list was totally without jurisdiction; that it was something on which this court has no jurisdiction to adjudicate and enquire into, and those averments in the election petition could never furnish a cause of action; that the election petition was also liable to be rejected, as there was no prayer to bring the case within the meaning of disqualification under Article 102(1)(d) of the Constitution, and therefore, under S.100(1)(a) of the Representation of People Act, the Constitution of india throughout maintains a well defined distinction between a person being "not qualified" and a person being "disqualified"; and that this distinction has also been accepted by the Hon'ble Supreme Court of India.

13. Added further the learned Senior Counsel that paragraph 11 in the election petition contains a prayer stating that the election of the first respondent was liable to be set aside under S.100(1)(a) of the Representation of People Act 1951, as returned candidate was not qualified to be chosen to fill the seat; that the term "not qualified" could only refer to the Article 84 of the Constitution which provided the contingency under which a candidate could be said to be not qualified for election, and thus when the prayer mentions only about the person being not qualified it cannot refer to any disqualification under Article 102(1)(d) of the Constitution; that the averments of invalidity of the petitioner herein in having been elected as member of Parliament was not challenged on any ground peculiar to Article 84, and thus the prayer cannot said to be supported by pleadings, and therefore the whole of the election petition is liable to be rejected; that it is averred in the petition that in document No.6 filed by the election petitioner, there is a column nationality against which there was an entry Singapore P.R., and on this it was sought to be contended by the election petitioner's side that this petitioner had stated that he is the Singapore National, and therefore it amounted to disqualification; that this was wholly erroneous and unreasonable; that even assuming that the said document is true and valid, it is stated as Singapore Permanent Resident; that it means the permanent residential status in Singapore; that it does not state that the petitioner is a Singapore national; that such a stand and pleading has not even been made by the election petitioner either in the election petition or in the counter filed to this application to reject the election petition, and hence the said contention put forth by the first respondent

herein could also be of no avail for the reason that if the petitioner herein is a Singapore national, then he would not be a Citizen of India; that if he is not a citizen of India, then that is a separate disqualification under Article 102 of the Constitution, but the same has not been pleaded either in the election petition or anywhere else including the counter to this application, and thus the election petition does not furnish the cause of action and totally lacks in material facts, and hence the same has got to be rejected.

14. In support of his contention, the learned Senior Counsel for the petitioner/first respondent relied on the following decisions. 1) AIR 1976 SC 744; 2) AIR 1969 SC 1201; 3) AIR 1999 SC 252; 4) JT 1992 (2) SC 484; 5) AIR 1996 AP 231; 6) AIR 1985 MADRAS 55; 7) 1986 (4) SCC 78; 8) 2001(8) SCC 233; 9) JT 2001 (7) SC 629; 10) 1989(4) SCC 482; 11) AIR 1996 SC 1100; 12) AIR 2001 SC 2565; 13) AIR 2001 SC 2992; 14) AIR 1953 SC 325; and 15) 1974(3) SCC 415.

15. Countering to the above contentions of the petitioner's side, the learned Senior Counsel Mr.T.R.Rajagopalan, appearing for the first respondent with vigour and vehemence would submit that the election petition was filed for setting aside the election of the petitionerfirst respondent on four grounds set out in the election petition; that during the pendency of the same and after the necessary issues for enquiry were framed, the petitioner-first respondent has filed the instant application for rejection of the election petition on the grounds that the election petition does not furnish any cause of action and also is totally lacking in material facts; that the relevant provisions which require consideration for deciding the matter are S.83(1) of the Representation of Peoples Act and Sec.100, Article 102 of the Constitution of India, Sec.2(e), Sec.4(d) and Sec.36 of the RP Act 19 51 and Ss. 16, 19 and 20 of the RP Act 1950; that in paragraphs 5 and 7 to 11 of the election petition, the election petitioner has specifically averred that the petitioner herein was clearly under an acknowledgement of allegiance or adherence to the foreign State, and thus incurring the disqualification for Membership of either House of Parliament even before the commencement of the election process; that the material facts which were highlighted in the petition were "that the first respondent had given his address as 37, Jalan Telite, Singapore; that he is a Director in Adventure Holdings Pvt. Ltd., incorporated on 2.4.1984, that he is also a director in other companies viz. Dipper Investments ltd., Godfrey Resources and Benjon Tree incorporated under U.K.Laws"; that the election petitioner has further referred to an extract from the Registry of Companies and Business, Singapore, regarding the brief details of Adventure Holdings Pvt. Ltd., in which the first respondent therein had stated as against the column " Nationality" Singapore PR; that this declaration was given on 11.11.1999, as seen from the document Nos. 4 and 5 filed along with the election petition; that it is also specifically stated that the

first respondent therein holds a passport under a permanent identity card of Singapore; that the same was stated as a fact in the election petition that the first respondent therein was clearly under an acknowledgement of allegiance or adherence to a foreign State and thus incurring a disqualification of Membership of either House of Parliament even before the commencement of the election process; that Article 102(1)(d) of the Constitution of India disqualifies a person from being chosen as and for being a Member of either House of Parliament if he is under any acknowledgement of allegiance or adherence to a foreign State; that in the instant case, the petitioner herein having declared his nationality as Singapore PR has shown that he is under an acknowledgement of allegiance or adherence to a foreign State viz. Singapore; that by declaring his nationality as Singapore PR, the petitioner herein was disqualified to contest an election in India; and that the contention of the petitioner that he has declared only his status as a Permanent Resident cannot be accepted, since nationality is different from the status of a permanent resident.

16. Added further the learned Senior Counsel that the question before this Court is whether the election petition is liable to be rejected on the ground that it had not disclosed the material facts; that a perusal of the election petition would clearly reveal that the same contains the necessary material facts to support the contentions raised relating to Article 102(1)(d) of the Constitution of india, and therefore the application filed by the petitioner/first respondent seeking rejection of the election petition is not maintainable; that in Law Lexicon of British India by Mr.P.Ramanatha Aiyar, the nationality is defined as distinctive national qualities; membership of a nation; race forming part of one or more political nations; that the nationality is the condition or status of belonging to a nation or a State either by birth or by naturalisation; that in American Encyclopedia Nationality in the legal sense is a status of belonging to a State for the purposes of International Law; that the Supreme Court in a case reported in AIR 1963 SC 1811 while considering whether the State Trading Corporation of India Ltd., is a citizen, has dealt with the subject nationality, where the Constitution Bench has pointed out that the nationality appurtains to the Domain of International Law, and represents the political status of a person, by virtue of which he owes allegiance to a particular sovereign authority; that by reason of his nationality, the petitioner/first respondent has to adhere to the laws of that land; that in view of the above legal position, the election petition discloses the material facts and therefore is not liable to be rejected; that the Apex Court in a case reported in 1999 (3) SCC 73 7 has dealt with the issue relating to the pleading of material facts as required under S.83 of the Representation of People Act; that the Hon'ble Supreme Court has pointed out the distinction between the pleading of material facts and the pleading of material

particulars; that according to the Supreme Court, the failure to plead the material particulars can be cured at a later stage by an appropriate amendment; that according to the Honourable Judges, an election petition was not liable to be dismissed in limine merely because full particulars of corrupt practice were not set out; that material facts are such primary facts, which must be proved at the trial by a party to establish the existence of a cause of action; that in the case reported in 199 9(1) SCC 666, the Supreme Court has held that all those facts which are essential to clothe the petitioner with a complete cause of action, or material facts which must be pleaded and failure to aver even a single material fact amounts to disobedience of mandate under S.83(1)(a) of the Act; that the Apex Court has extracted the relevant portion of the Election Petition on its hand and has pointed out that the election petitioner had pleaded the material facts; that in the said decision, the Apex Court has referred to an earlier decision of that Court reported in 1994 (2) SCC 392, and has held that a reasonable cause of action is said to mean a cause of action is some chances of success, and so long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out; that the Supreme Court in a case reported in 2002(1) SCC 499 after referring to all its earlier judgments, has held that material facts and material particulars certainly connotes two different things, and material facts are those facts which constitute the cause of action; and that the Supreme Court in a decision in 2000(2) SCC 294 has also held that the court cannot dissect the pleadings into several parts and consider whether each one of them discloses cause of action, and the petition has to be considered as a whole, and there cannot be a partial rejection of the petition.

17. Relying on a decision of the Apex Court reported in 1999 (2) SCC 217, the learned Senior Counsel for the first respondent would urge that the election petition cannot be dismissed in limine for want of particulars, and if the court finds that particulars are necessary, an opportunity should be given to the petitioner to amend the petition and include the particulars; that the Apex Court has also held in 19 98(1) SC 416 that the election petition cannot be rejected at a preliminary stage on the ground that it does not contain a concise statement of facts, and thus in view of the pronouncements of the Hon'ble Supreme Court, the present election petition cannot be rejected on the ground that it does not disclose the material facts or the cause of action; that the election petitioner has specifically pleaded that the petitioner/first respondent has declared his nationality as Singapore PR; that he was under an acknowledgement of allegiance or adherence to a foreign state; that the requirement of Article 102(1)(d) of the Constitution was satisfied; that the averment of the petitioner herein in this

application to ignore the statement of facts pleaded and then making a submission that even on the basis of the fact pleaded, the election petition cannot be maintained, is unsustainable; that once the material facts are disclosed in the election petition and cause of action is established, the election petition cannot be rejected on the ground that the election petitioner's case was a weak one; that in fact the petitioner/first respondent's contention before the Enforcement authorities that the FERA is not applicable to him also would prove that the fact pleaded by the election petitioner was correct; and the petitioner/first respondent suffered a disqualification.

18. It is also argued by the learned Senior Counsel that the other ground on which the election petition filed was that the petitioner/ first respondent was not an ordinarily resident as defined under the Representation of People Act, 1950; that S.2(e) of the Act defines " Elector"; that the elector in relation to a constituency means a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in S.16 of the Representation of People Act, 1950 ; that S.4 of the said Act refers to the qualification for Membership of the House of the People, and as per S.4(d) of the Act, a person shall not be qualified to be chosen to fill a seat in the House of the People unless he is an elector for any parliamentary constituency; that S.19 of the Representation of People Act 1950 prescribes conditions of registration of the voters; that S.19(b) requires every person, who is "ordinarily resident" in the constituency shall be entitled to be registered in the electoral roll of the constituency; that the ordinarily resident is defined under S.20 of the Act; that on the facts pleaded in the present election petition, the petitioner/first respondent cannot be considered to be an ordinarily resident as the facts pleaded in the election petition would show that he had his permanent residence in Singapore and he had declared himself to be a Singapore National; that the submission of the petitioner/first respondent in this application seeking for rejection of the election petition was that once the petitioner/first respondent is registered as an elector, he is qualified to stand for election as the disqualification under S.16 of the Act is not applicable to him, is untenable; that it is not correct to state that the question of eligibility of a voter enrolled in an electoral roll cannot be decided in the election petition, in view of the decision of the Supreme Court reported in 2001(8) SCC 233 wherein the Hon'ble Supreme Court has pointed out that sub Sec.7 of Sec.36 of R.P.A 1951, dealing with scru tiny of nomination paper by the Returning officer itself provides that for the purpose of this Section, a certified copy of an entry in the electoral roll shall be conclusive evidence of the person being an elector for the constituency, unless it is proved that he is subject to a disqualification mentioned in

Sec.16 of the RPA 1950; and that the Supreme Court has also held that if a person is alleged to be not a citizen of India, therefore, suffering from absence of qualification under Art.84 is also a positive disqualification of Art.102 of the Constitution, than the case which one attracts applicability of Sec.100(d)(iv) of RPA 151 and such an issue can be tried by the High Court in an election petition in spite of the returned candidate being enrolled in the voters list, for it will be a case of alleged non-compliance of the provisions of the Constitution.

19. Added further the learned Senior Counsel that an invalid registration of a foreign national as an elector is opposed to the provisions of the RP Act as well as the Constitution; that in the present election petition, the election petitioner has categorically stated that the petitioner/first respondent has shown allegiance or adherence to another State and that he is not a resident of India; that in the circumstances, the first respondent being registered as an elector in the electoral roll was per se void and was opposed to the Constitution as well as the provisions of the Representation of People Act; that in the circumstances, the question whether the registration of the petitioner/first respondent in the electoral roll was legal or not can be gone into in the instant election petition; that the election petitioner had pleaded material facts; that he was entitled to prosecute the election petition, and the application for rejection of the same is therefore not maintainable; that in the election petition, the election petitioner has pleaded all the material facts in support of his contention relating to Ss 100(1)(a), 100(1)(d)(i) and 100(1)(d)(iv) of the Representation of People Act; that the disqualification under S.8(1)(e) of the said Act is not satisfied, and thus the election petitioner has given all the material facts necessary and has furnished the causes of action, and hence it cannot be stated that the election petition does not furnish the cause of action either, or is totally lacking in material particulars within the meaning of S.83(1)(a) of the Representation of People Act, and therefore, the application filed by the petitioner/first respondent for rejection of the election petition has got to be dismissed. In support of his contentions, the learned Senior Counsel relied on the following decision: 1) 1999(3) SCC 737; 2) 2000 (2) SCC 294; 3) 1998 (1) SCC 416; 4) 2002 (1) SCC 499; 5) AIR 2001 SC 2565; 6) AIR 1963 SC 1811 and 7) 1999 (2) SCC 217.

20. As seen above, the election petitioner, who is the first respondent herein has filed the election petition seeking a declaration that the election of the first respondent, who is the petitioner herein from No.25 Periyakulam Parliamentary Constituency as null and void and to set aside the same on the specific grounds, stated supra. Pending the election petition, the first respondent therein has filed the instant application seeking an order of rejection of the election petition on the

ground that it does not furnish the cause of action, and also totally lacks in material facts within the meaning of S.83(1)(a) of the Representation of People Act. Thus the only question that would arise for consideration would be whether the election petition instituted by the first respondent herein has to be rejected on the ground that it does not furnish the cause of action and totally lacks in material facts as understood by S.83(1)(a) of the Representation of People Act.

21. Before adverting to the said question, it would be appropriate to highlight the necessary and relevant provisions of the Representation of People Act, 1950 and 1951 and the Articles of the Constitution of India. The election petition filed by the first respondent herein relies on Ss. 100(1)(a), 100(1)(d)(i), 100(1)(d)(iv) and S.8(1)(e) read with S.100(1)(a) of the Representation of People Act, and the provisions of the Constitution of India in Article 102(1)(d). S.100 of the Representation of People Act, 1951 enumerates the grounds for declaring the election to be void.

S.100(1)(a) of the Act reads:

"(1) Subject to the provisions of sub-section (2) if the High Court is of opinion-

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963)".

S.100(1)(d)(i) of the Act reads as follows:

"(1)....

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-

(i) by the improper acceptance of any nomination".

S.100(1)(d)(iv) of the Act reads thus;

"(1)....

(d).....

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act".

Speaking of the disqualification on conviction for certain offences, S.8(1)(e) of the Act reads:

"(1) A person convicted for an offence punishable under-

(e) the Foreign Exchange (Regulation) Act, 1973 (46 of 1973); or.....

shall be disqualified for a period of six years from the date of such conviction".

Article 102(1)(d) of the Constitution of India reads thus;

"102. Disqualification for membership:- (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament-

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State".

22. Now the court has to examine whether the election

petition filed by the first respondent herein is lacking in material facts within the meaning of S.83(1)(a) of the Representation of People Act, 1951, and does not disclose any cause of action and raise a triable issue, which could be put to trial. S.83 of the Representation of People Act reads:

"83. Contents of petition:- (1) An election petition-

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice...."

A reading of the above Section would clearly reveal that it contemplates that an election petition shall contain a concise statement of material facts, on which the election petitioner relies. The Hon'ble Apex Court had an occasion to consider the mandate under the said provision in a case reported in JT 2001 (7) SC 629 (HARI SHANKER JAIN V. SONIA GANDHI), and has held as follows:

"23. Section 83(1)(a) of RPA, 1951 mandates that an election petition shall-contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression 'cause of action' has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See Samant N. Balakrishna etc. V.George Fernandes and Ors. Etc. (((1969) 3 SCR 603), Jitender Bahadur Singh V. Krishna Behari ((1969) 2 SCC 433). Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In V.S.Achuthanandan v. P.J.Francis & Anr. (JT 1999 (2) SC 347 = (1999) 3 SCC 737), this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleading is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.

24. It is the duty of the court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action. To enable a

court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else. Courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings."

23. At this juncture, it has become very necessary to point out the distinction between the material facts and material particulars, because different consequences might flow from a deficiency of such facts or particulars in the pleading. The Division Bench of the Hon'ble Supreme Court in a case reported in AIR 1976 SUPREME COURT 744 (UDHAV SINGH V. MADHAV RAO SCINDIA) has dealt with the distinction between the material facts and material particulars and has observed thus:

"37. Like the Code of Civil procedure, this section also envisages a distinction between "material facts" and "material particulars" Cl.(a) of sub-section (1) corresponds to Order 6, Rule 2, while Clause (b) is analogous to Order 6, Rules 4 and 6 of the Code. The distinction between "material facts" and "material particulars" is important because different consequences may flow from a deficiency of such facts or particulars or particulars in the pleading. Failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6, Rule 16, Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of material facts, the petition is liable to be summarily rejected for want of a cause of action. In the case of a petition suffering from a deficiency of material particulars, the court has a discretion to allow the petitioner to supply the required particulars even after the expiry of limitation.

38. All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are "material facts". In the context of a charge of corrupt practice " material facts" would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election petition, a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstances of the case. In short, all those facts which are essential to clothe the petitioner with a complete cause of action, are "material facts" which must be pleaded, and failure to plead even a single material fact amounts to disobedience of the mandate of Sec.83(1)(a).

39. "Particulars", on the other hand, are "the details of the case set up by the party". "Material particulars" within the contemplation of Clause (b) of Section 83 (1) would therefore mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of Clause (a). 'Particulars'

serve the purpose of finishing touches to the basic contours of a picture already drawn, to make it full, more detailed and more informative.

40. The distinction between 'material facts' and 'material particulars' was pointed out by this Court in several cases, three of which have been cited at the bar. It is not necessary to refer to all of them. It will be sufficient to close the discussion by extracting what A.N.Ray J. (as he then was) said on this point in Hardwari Lal's case (AIR 1964 SC 1366) (supra):

"It is therefore vital that the corrupt practice charged against the respondent should be a full and complete statement of material facts to clothe the petitioner with a complete cause of action and to give an equal and full opportunity to the respondent to meet the case and to defend the charges. Merely, alleging that the respondent obtained or procured or attempted to obtain or procure assistance are extracting words from the statute which will have no meaning unless and until facts are stated to show what that assistance is and how the prospect of election is furthered by such assistance. In the present case, it was not even alleged that the assistance obtained or procured was other than the giving of vote. It was said by counsel for the respondent that because the statute did not render the giving of vote a corrupt practice the words "any assistance" were full statement of material fact. The submission is fallacious for the simple reason that the manner of assistance, the measure of assistance are all various aspects of fact to clothe the petition with a cause of action which will call for an answer. Material facts are facts which if established would give the petitioner the relief asked for. If the respondent had not appeared, could the court have given a verdict in favour of the election petitioner? The answer is in the negative because the allegations in the petition did not disclose any cause of action.""

24. It has also been held by the Apex Court in a decision reported in (1999) 3 SUPREME COURT CASES 737 (V.S.ACHUTHANANDAN V. P.J.FRANCIS AND ANOTHER) thus;

"In the instant case, as noted earlier, the election petition has been rejected by invoking the powers of Section 83 of the Act read with Order 7 Rule 11(a) of the Code of Civil Procedure. After referring to some judgments, the learned trial Judge of the High Court has concluded:

"Read as a whole, the averments contained in the election petition do not satisfy the requirements of Section 83 of the Act. No prima facie case is made out to hold that the first respondent has committed corrupt practices or that it is a fit case where re-counting is to be ordered. On a perusal of the election petition, it is seen that the petitioner has not pleaded the material facts with necessary particulars which would enable the Court to grant the prayer made in the petition. Pleadings in the election petition do not make out a cause of action for ordering re-count, as prayed for in the petition. So, the

election petition is liable to be rejected under Section 83 of the Act read with Order 7 Rule 11(a) CPC."

15. It would thus appear that the election petition was rejected mainly on the ground that it did not disclose the cause of action as according to the learned trial Judge the allegations regarding corrupt practice were vague and did not disclose "material facts and full particulars" of the corrupt practice alleged. It is evident that the learned trial Judge did not distinguish between the "material facts" and the "material particulars" of allegations regarding corrupt practices as defined under Section 123 of the Act. The law on the point is well settled which appears to have not been taken note of or appreciated by the learned trial Judge. After referring to various pronouncements of this Court including cases in Balwan Singh v. Lakshmi Narain, Samant N.Balkrishna v. George Fernandez, Virendra Kumar Saklecha v. Jagjiwan, Udhav Singh v. Madhav Rao Scindia, F.A.Sapa v. Singora and Gajanan Krishnaji Bapat v. Dattaji Raghobaji Meghe and a host of other authorities, this Court in L.R.Shivaramagowda v. T.M.Chandrshekar held that while failure to plead "material facts" is fatal to the election petition and no amendment of the pleading is permissible to introduce such material facts after the time-limit prescribed for filing the election petition, the absence of "material particulars" can be cured at a later stage by an appropriate amendment. An election petition was not liable to be dismissed in limine merely because full particulars of corrupt practice alleged were not set out. It is, therefore, evident that material facts are such primary facts which must be proved at the trial by a party to establish existence of a cause of action. Whether in an election petition a particular fact is a material fact or not, and as such, required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon, and in the light of

the special circumstances of the case. In Udhav Singh case the Court held:(SCC p.523, paras 42-43)

"In short, all those facts which are essential to clothe the petitioner with a complete cause of action, are 'material facts' which must be pleaded, and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83(1)(a).

'particulars', on the other hand, are 'the details of the case set up by the party'. 'Material particulars' within the contemplation of clause (b) of Section 83(1) would therefore mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of clause (a). 'Particulars' serve the purpose of finishing touches to the basic contours of a picture already drawn, to make it full, more detailed and more informative.""

25. Whether in an election petition a particular fact is material or not, and as such required to be pleaded is a question

depending upon the nature of the charges levelled, the ground relied upon by the election petitioner and the special circumstances of the case. The facts which are essential to clothe the petitioner/first respondent with a complete cause of action, are material facts, which must be necessarily pleaded, and failure to plead even a single material fact would amount to disobedience of the mandate of S.83(1)(a) of the Representation of People Act, 1951.

26. Bearing in mind the mandatory provision that the election petition should contain a concise statement of material facts, on which the election petitioner relies, and the distinction between the material facts and material particulars, this court has to examine the election petition and find out whether the election petition has to be rejected on the ground that it lacks material particulars, and it does not disclose a cause of action, as contended by the petitioner/first respondent.

27. The specific case of the election petitioner is that the petitioner/first respondent has already incurred the disqualification for Membership of either House of the Parliament by acknowledgement of his allegiance or adherence to the foreign State. It would be more appropriate to reproduce the pleadings in the election petition in that regard (Paragraphs 5,7,8,9,10,and 11).

"5.....the 1st respondent herein has acquired allegiance or adherence to Foreign State viz. Republic of Singapore and in support of the same, filed a copy of memo of appeal (Document III) preferred by the 1 st respondent before the appellate Board and in view of such penalty suffered, the 1st respondent should be disqualified.

7. The petitioner submits that by his own admission before the Enforcement Officer, Chennai, entrusted with the administration of the provisions of Foreign Exchange Regulation Act, made on various dates between 2-11-95 and 30-1-96, the 1st respondent herein had stated and given his address as 37, Jalan Teliti, Singapore, that he should be regarded as a non resident Indian and he had made his claim as holding a permanent resident status of Singapore. He had also stated that he is a Director in ADVENTURE HOLDINGS PTE LTD., incorporated on 2-4-1994 and that he was also a Director in certain other companies viz. Dipper Investments Ltd., Godfrey Resources and Benjan Tree incorporated under UK Laws. The aforesaid statements of the 1st respondent herein had been filed by the Enforcement Directorate in the typed set of papers after duly serving copies on the 1st respondent herein, in HCP No.240/96 on the file of this Hon'ble Court. Excerpts from his statements have also been quoted in the judgment of this Hon'ble Court in the said HCP No.240/96, dated 27.8.96.

8. The petitioner herein is filing herewith an extract from the REGISTRY OF COMPANIES AND BUSINESS (RCB) Singapore regarding the brief details of ADVENTURE HOLDINGS PTE LTD., incorporated on 2-4-94 in which as regards the 1st respondent, it is stated as

against the column ' Nationality": 'SINGAPORE P.R.', and his position as Director. It is also stated at the end of the extract that the above information is updated to fourteen days from 11-11-1999 (Document VI).
The petitioner is also filing true xerox copies of the following documents:
i) The Deposit Scheme for Permanent Residence;
ii) Application for Permanent resident under the Entrepreneur Scheme;
iii) Deposit Scheme for permanent residence Form 'A';
iv) Application for Permanent Residence in Singapore for Entrepreneurs Form 'B'; and

v) Form 4 Immigration Act Application for an Entry permit for permanent residence (Documents VII (i) to (V
9. The petitioner submits that from the schedule of dates relating to the election for Periyakulam Constituency as stated above, the 1st respondent on all the relevant dates was holding a Permanent Resident status of Singapore. The status of permanent residence was applied for by the 1st respondent and granted by the Singapore Authorities in January 1995 subject to local laws of Singapore State in this behalf and as such, the said status is subject to the rights and liabilities arising out of Singapore laws (Immigration Act and Companies Act). By holding such a permanent status of Singapore, the 1st respondent herein is clearly under an acknowledgement of allegiance or adherence to the Foreign State thus incurring the disqualification for Membership of either of House of Parliament, even before the commencement of Election process.
10. The petitioner submits that the 1st respondent in his statements before the Enforcement Directorate referred to above, stated that he has been issued with a permanent Identity Card and Passport No.NRIC/ Passport No.S2645368B at Singapore.
11. The 1st respondent herein by his statements mentioned above, in being a Director in Dipper Investments Ltd., Godfrey Resources and Benjan Tree is governed by UK Company Laws as the said companies have been incorporated under U.K. Laws. Being the Director of the above said companies, he is under an acknowledgement of an allegiance or adherence to the Foreign State under Art.102(1)(d) of the Constitution of India."
28. Article 102(1)(d) of the Constitution of India disqualifies a person for being chosen as and for being a Member of either House of Parliament, if he is under any acknowledgement of allegiance or adherence to a foreign State. Hence, it has become necessary to examine what is acknowledgement of allegiance or adherence to a foreign State. Needless to say that allegiance is different from adherence. " Allegiance" is defined in the Law Lexicon by Ramanatha Iyer as follows:
""Allegiance" is such natural or legal obedience which every subject owes to his Prince. The obligation of fidelity which the individual owes to the government or to be sovereign under which

he lives in return for the protection he receives.....
the tie or ligament which binds the subject (or citizen) to the King (or Government) in return for that protection which the King (or Government) affords the subject (or citizen). It consists in "a true and faithful obedience of the subject due to his sovereign."

The word 'adherence' employed in Article 191(1)(d) of the Constitution came up for interpretation by a Full Bench of this Court in a case reported in AIR 1985 MADRAS 55 (K.S.HAJA SHAREFF V. HIS EXCELLENCY THE GOVERNOR OF TAMIL NADU, MADRAS AND OTHERS), wherein it was held,

""Adherence" means that a person must follow or hold or maintain loyalty, steadily or consistently to a person, or group or state."

29. Relying on a document being an extract from the Registry of Companies and Business (RCB), Singapore, as to the details of Adventure Holdings Pte Limited and pointing to the statement given by the petitioner/first respondent as against the column 'Nationality' as Singapore P.R., it is contended by the election petitioner's side that the status of permanent resident was applied for by the petitioner-first respondent and granted by the Singapore authorities subject to the local laws of Singapore State in that behalf, and as such the said status was subject to the rights and liabilities arising out of Singapore laws viz. Immigration Act and Companies Act, and by holding such a permanent status of Singapore, the petitioner/first respondent was clearly under an acknowledgement of allegiance or adherence to a foreign State, and thus has incurred the disqualification for membership of either house of Parliament even before the commencement of the election process. It is pertinent to note that the election petition has not proceeded on the footing that the petitioner/first respondent was neither a citizen of India nor his citizenship was terminated at any point of time. It is not disputed that he was born in India, and by virtue of the same, he is of Indian origin and citizenship under Article 5 of the Indian Constitution. Under such circumstances, the statement given by the petitioner/first respondent against the column ' Nationality' as Singapore Permanent Resident as stated above by itself, will not take away or put an end to his Indian citizenship. While nationality is a condition or status of belonging to a nation or State either by birth or by a naturalisation, it would be very hard to infer or accept that the petitioner/first respondent by making a mere statement before the Registrar of Companies and Business, Singapore, has acquired the nationality of that country. It is pertinent to note that nowhere the election petitioner has pleaded that the petitioner herein had acquired the nationality of Singapore, nor can the Singapore Permanent Resident be equated to the nationality of Singapore. At this juncture, it would be appropriate and more advantageous also to reproduce the law laid down by the Full Bench of the Hon'ble Apex Court in a case reported in JT 2001 (7)

SC 629 (HARI SHANKER JAIN V. SONIA GANDHI), as follows:
"In election petition no.4 of 1999 filed by Hari Krishna Lal it is alleged that the respondent is a citizen of Italy and has not renounced the same without stating on what facts or material the petitioner has drawn that inference. It is alleged that the respondent was at the material time 'under acknowledgement of allegiance and adherence' to Italy, a foreign State, which is a disqualification within the meaning of Article 102 of the Constitution. The material part of the averment is an expression picked up and reproduced as a ritual from Article 102 of the Constitution but the material facts wherefrom such inference may follow have not been stated. The petition then alleges that the respondent did not reside in India for a period of 12 months immediately before her having applied for citizenship by registration on 7th April, 1983 which was granted to her on 30th April, 1983. However, the petition itself alleges that the respondent came to India from Italy some time after the year 1971 and was in India in the year 1977, 1980 and 1983. When did the respondent then go away from India and the exact period of time when the respondent was or must have been away from India so as to infer her having not resided in India for the requisite period of 12 months before 30th April, 1983, as averred, are not stated. Factual matrix for the bald assertion is completely missing from the election petition. There is no overt act relating to adherence and allegiance after the grant of citizenship to the respondent, even alleged, let alone supported by through any material facts."

The said declaration would mean the permanent residency status of the individual in Singapore. It is not the stand or the pleading of the election petitioner that the petitioner/first respondent was a Singapore national. Hence, the election petitioner cannot now be permitted to say that the petitioner/first respondent is a Singapore national, and thereby, he suffers the disqualification. If the petitioner/ first respondent is a national of Singapore State, he cannot be a citizen of India, and if he is not a citizen of this country, then, that would constitute a separate disqualification under Article 102 of the Constitution, but that is not the case of the election petitioner.
30. What are all averred in the election petition is that by holding a permanent resident of Singapore, the petitioner/first respondent is under an acknowledgement of allegiance or adherence to a foreign State. A mere statement that the petitioner/first respondent was subject to the local laws of Singapore State and his status as a permanent resident was subject to the rights and liabilities arising out of the Singapore laws viz. Immigration Act and Companies Act would not by itself be sufficient to hold that he is under an acknowledgement of allegiance or adherence to that State. Equally so is the averment that the petitioner/first respondent being a Director in Dipper Investments Ltd., Godfrey Resources

and Benjan Tree was governed by U.K. Company laws and hence as a Director of the said Companies he was under an acknowledgement of allegiance or adherence to a foreign State under Article 102(1)(d) of the Constitution. It remains to be stated that though the election petitioner has averred that the petitioner/ first respondent was disqualified to contest the election because of his declaration as Singapore Permanent Resident, the election petitioner has not chosen to aver anything about the rights and liabilities attached to a permanent resident of Singapore, in order to find out whether those rights and liabilities would amount to allegiance or adherence within the meaning of Article 102 of the Constitution of India. The contention of the election petitioner that the petitioner/first respondent was a Director of some companies governed by the laws of that State, and hence it has to be construed that he owes allegiance to that State or adherence to those laws, cannot be countenanced. The averments in the election petition does not contain anything about the rights and liabilities arising out of Singapore laws, viz. Immigration Act and Companies Act. Merely making mention of these two enactments of Singapore State would not be sufficient nor can it constitute the statement of material facts. This view of the court is fortified by the judgment of the Apex Court in Sonia Gandhi's case (JT 2001 (7) SC 629), stated supra, wherein it was held as follows:

"27. Italian law is a foreign law so far as the courts in India are concerned. Under Section 57(1) of Indian Evidence Act, 1871, the Court shall take judicial notice of, inter alia, all laws in force in the territory of India. Foreign laws are not included therein. Sections 45 and 84 of Evidence Act permit proof being tendered and opinion of experts being adduced in evidence in proof of a point of foreign law. Under order VI Rule 2 of the Code of Civil Procedure, 1908, every pleading shall contain a statement in concise form of the material facts relied on by a party but not the evidence nor the law of which a court may take judicial notice. But the rule against pleading law is restricted to that law only of which a c ourt is bound to take judicial notice. As the court does not take judicial notice of foreign law, it should be pleaded like any other fact, if a party wants to rely on the same (See Mogha's Law of Pleadings, 13th Edition, Page 22). In Guaranty Trust Company of New York v. Hannay & Co. (1918(2) KB 62 3), it was held that, "Foreign law is a question of fact to an English court ..... the opinion of an expert on the fact, to be treated with respect, but not necessarily conclusive". In Beatty v. Beatty (192 4 (1) KB 807), it was held that the American law in English courts must be proved by the evidence of experts in that law. In Lazard Brothers and Company v. Midland Bank Limited (1933 AC 289), their Lordships of Privy Council observed that what the Russian Soviet law is, is a question of fact, of which the English court cannot take judicial cognizance, even though the foreign law has already been

proved before it in another case. The court must act upon the evidence before it in that actual case. The statement of law by Halsbury in Laws of England (Third Edition, Vol.15, Para 610, at page 335) is that English courts cannot take judicial notice of foreign law and foreign laws are usually matters of evidence requiring proof as questions of fact.

28. There is, thus, no manner of doubt that in the courts in india, a point of foreign law is a matter of fact and, therefore, a plea based on a point of foreign law must satisfy the requirement of pleading a material fact in an election petition filed before the High Court. ....."

In view of the above decision, the submission made by the learned counsel for the first respondent that the election petitioner has averred the names of the enactments and the remaining things were matters of evidence cannot be countenanced, in the absence of a specific pleading as to the provisions in the enactments speaking of the rights and the liabilities attached to the individual. So long as this court cannot take judicial notice of a foreign law, which is the question of fact, the election petitioner should have pleaded the necessary provisions of the enactments, which would speak of the acknowledgement of allegiance or adherence to that State. Nowhere it is averred in the election petition what these two enactments state about the rights of a permanent resident holder or the privileges conferred or obligations and duties imposed on him. That apart, it would also be necessary to specifically plead how those privileges or duties or obligations would amount to acknowledgement of allegiance or adherence to that State. Thus what are all stated in the election petition is the names of the two enactments of Singapore, a foreign State. The court is of the opinion that it cannot amount to stating of material facts; and that the election petition neither contains the positive statement of facts nor the positive averments of negative facts. In the absence of those material facts, an inference that the permanent resident status of the petitioner/first respondent would mean allegiance or adherence to the State of Singapore cannot be drawn. In view of the absence of such a pleading, it cannot be stated that the election petition contained a statement in the concise form of material facts relied on by the election petitioner, as required by S.83(1)(a) of the Representation of People Act, 1951.

31. Much relying on a Full Bench decision of this court reported in AIR 1985 MADRAS 55 (K.S.HAJA SHAREFF V. HIS EXCELLENCY THE GOVERNOR OF TAMIL NADU, MADRAS, AND OTHERS), the learned Senior Counsel for the election petitioner would submit that the said decision is applicable as the facts in that case are analogous to the present case, and thus, it has got to be held that the petitioner/first respondent has acknowledged adherence to the foreign State, and thereby, he was disqualified from continuing as Member of the Parliament. On a perusal of the Full Bench judgment of this court, stated supra, it could be seen that this court has found that K.S.Haja Shareff, the petitioner

therein had acknowledged adherence to foreign State on proved facts that he was appointed as Honorary Counsel of Republic of Turkey, and in that capacity he bound himself to the State of Turkey; that he represented the interest of Turkey Nationals in India; that he would do all other assignments which might be entrusted to him in the interest of the State of Turkey; that he would hoist the national flag of Turkey and play National anthem of Turkey while celebrating the Turkish National Holidays; that on the Republic Day or Independence Day of India, he would hoist the Turkish flag and participate in the function as a representative of the State of Turkey; that he was entitled to fly the flag of Turkey and display coat of Arms of Turkey; that he would correspond directly with the Diplomatic Mission of Turkey; and that he received remuneration out of Turkish National Fund. In view of the above, their Lordships in the said decision have held that the petitioner therein was disqualified from continuing as the Member of the Assembly. This Court is afraid whether the above decision of this court rendered on those proved and established facts can be applied to the present facts of the case.

32. One of the grounds, on which the election of the petitioner/ first respondent is challenged, is that the election has been materially affected by improper acceptance of his nomination, and hence it has to be declared as void under S.100(1)(d) of the Act. It is not in dispute that the name of the petitioner/first respondent has been registered as an elector at No.2, 4th Street, Venkateswara Nagar, Mylapore, Chennai in the voters list of Mylapore Constituency. It is contended by the election petitioner's side that the registration of the name of the petitioner herein in the voters list itself was illegal and void, since he was not an ordinarily resident in the said constituency, and hence he was not entitled to be registered in the electoral roll in that constituency; that once the petitioner/first respondent was not entitled to register as a voter and has not satisfied the conditions of ordinarily resident for being registered in the voters list, then he could not be said to have satisfied the conditions for Membership of the Houses, as stated in S.4(d) of the Act, and that when under law the petitioner/first respondent cannot be registered as a voter in any constituency, he was not entitled to file the nomination, and the acceptance of the said nomination amounted to an improper acceptance of nomination, by which the result of the election has been materially affected. The court is of the view that the legality or otherwise of the registration of the petitioner-first respondent as a voter in the voters list cannot either be examined and investigated into, or be found as an improper acceptance of nomination, in view of the law laid down by the Constitution Bench of the Supreme Court consisting of five Honourable Judges reported in (1974) 3 SUPREME COURT CASES 415 (HARI PRASAD MULSHANKER TRIVEDI V. V.B.RAJU AND OTHERS). In the said case, their Lordships of the Supreme Court have held as

follows:
"We think that the intention of the Parliament to oust the jurisdiction of the Court trying an election petition to go into the question whether a person is ordinarily resident in the constituency in the electoral roll of which his name is entered is manifest from the scheme of 1950 and the 1951 Acts. It would defeat the object of the 1950 Act if the question whether a person was ordinarily resident in a constituency were to be tried afresh in a court or tribunal, trying an election petition."
From the above decision of the Hon'ble Apex Court, it would be abundantly clear that this court trying the election petition should not go into the question whether the petitioner/first respondent was an ordinarily resident in the said constituency or as to the legality or otherwise of the registration of the petitioner-first respondent as a voter in the electoral roll. According to S.36(7) of the Representation of People Act, a certified copy of an entry in the electoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it was proved that he was subjected to a disqualification mentioned in S.16 of the Representation of People Act, 1950. According to S.16 of the Representation of People Act, 1951, a person shall be disqualified for registration in an electoral roll, if he is not a citizen of India or is of unsound mind and stands so declared by a competent court or for the time being is disqualified for voting under any law, relating to corrupt practice and other offences in connection with the election. It is pertinent to note that the registration of the petitioner/first respondent in the electoral roll in Mylapore Constituency is not attacked by the election petitioner on any one of the grounds specified under the above provision. The averments in the election petition, thus, cannot make out a cause of action to challenge the election in this Court.
33. The other ground challenging the election, is that the petitioner/first respondent was disqualified under S.8(1)(e) read with S.100(1)(a) of the Representation of People Act, 1951. Paragraph 13 of the election petition reads:

"Even otherwise, the 1st respondent has been ordered to pay a penalty of Rs.31 Crores for offences under FERA by proceedings of the Special Director, Enforcement Directorate, New Delhi in order No.SDE (APK) III/03/98 F.No.T-3/22-D/95 dated 6-2-98. Courts have held that for payment of penalty, mens rea or culpability is necessary. Unless the conduct of the person is contumacious or intentionally dishonest in violating the provisions of the Act, penalty could not be levied. Though the 1st respondent has preferred an appeal against the said order before the Foreign Exchange Regulation Appellate Board, New Delhi, a mere filing of an appeal would not have the effect of wiping out the said order levying penalty. May be, its enforcement by way of collection might be stayed. In the circumstances, it should be deemed that

the 1st respondent has suffered disqualification as per Sec.8(i)(e) of the Representation of People Act 1951. Even though this objection was raised before the Returning Officer, the said objection has been rejected, without any consideration in proper perspective. The object of prescribing such a disqualification is to ensure purity in public life and such offenders of FERA cannot be said to fall outside the ambit of Sec.8 and not to countenance such an interpretation would only result in defeating the very object of such a provision prescribing the disqualification for violation of statutory provisions. In this view of the matter the 1st respondent should have been disqualified and is liable to be disqualified under Sec.8(1)(e) read with Sec.1 00(1)(a) of the Representation of the People Act 1951."

A reading of S.8(1)(e) of the Representation of People Act would make it explicit that in order to attract the disqualification, the concerned person should have been convicted of an offence punishable under the Foreign Exchange Regulation Act, 1973. Thus there should have been a conviction followed by a trial on a lawful charge framed against the person. Nowhere the election petition mentions that the elected candidate was prosecuted for any offence under the FERA nor was he punished thereunder. The Hon'ble Apex Court had an occasion to consider the circumstance and hold that the adjudication proceedings under the FERA did not amount to conviction for an offence, and they are only civil contravention, in a case reported in AIR 1996 SUPREME COURT 1100 (DIRECTOR OF ENFORCEMENT V. M/S.MCTM CORPORATION PVT. LTD AND OTHERS), as follows:

"The proceedings under S.23(1)(a) are "adjudicatory" in nature and character and are not 'criminal proceedings'. The officers of the Enforcement Directorate and other administrative authorities are expressly empowered by the Act to 'adjudicate' only. Indeed they have to act "judicially" and follow the rules of natural justice to the extent applicable but, they are not 'Judges' of the "Criminal Courts" trying an 'accused' for commission of an offence, as understood in the general context. They perform quasi-judicial functions and do not act as "Courts" but only as 'administrators' and 'adjudicators'. In the proceedings before them, they do not try "an accused" for commission of "any crime" (not merely an offence) but determine the liability of the contravenor for the breach of his "obligations" imposed under the Act. They impose 'penalty' for the breach of the 'civil obligations' laid down under the Act and do not impose any "sentence" for the commission of an offence. The expression 'penalty' is a word of wide significance. Sometime, it means recovery of an amount as a penal measure even in civil proceedings. An exaction which is not compensatory in character is also termed as a 'penalty'. When penalty is imposed by an adjudicating officer, it is done so in 'adjudicatory proceedings' and not by way of fine as a result of "prosecution" of an ' accused' for commission of an "offence" in a criminal

Court. Therefore, merely because 'penalty' clause exists in Section 23(1)(a), the nature of the proceedings under that Section is not changed from ' adjudicatory' to 'criminal' prosecution. An order made by an adjudicating authority under the Act is not that of conviction but of determination of the breach of the civil obligation by the offender.
Constitution of India, Art. 20(2).
Mens rea (as is understood in criminal law) is not an essential ingredients for holding a delinquent liable to pay penalty under Section 2 3(1)(a) of FERA 1947 for contravention of the provisions of Section 1 0 of FERA, 1947 and penalty is attracted under Section 23(1)(a) as soon as contravention of the statutory obligation contemplated by Section 10(1)(a) is established.
The breach of a "civil obligation" which attracts "penalty" under Section 23(1)(a) and a finding that the delinquent has contravened the provisions of Section 10 would immediately attract the levy of ' penalty' under Section 23 irrespective of the fact whether the contravention was made by the defaulter with any "guilty intention" or not. Therefore, unlike in a criminal case, where it is essential for the " prosecution" to establish that the "accused" had the necessary guilty intention or in other words the requisite 'mens rea' to commit the alleged offence with which he is charged before recording his conviction, the obligation on the part of the Directorate of Enforcement in cases of contravention of the provisions of Section 10 of FERA, would be discharged where it is shown that the "blameworthy" conduct of the delinquent had been established by wilful contravention by him of the provisions of Section 10. It is the delinquency of the defaulter itself which established his "blameworthy" conduct attracting the provisions of Section 23(1)(a) without any further proof of the existence of "mens rea". Even after an adjudication by the authorities and levy of penalty under Section 23(1)(a), the defaulter can still be tried and punished for the commission of an offence under the penal law, where the act of defaulter also amounts to an offence under the penal law and the bar under article 20(2) of the Constitution of India in such a case would not be attracted. The failure to pay the penalty by itself attracts 'prosecution' under Section 23-F and on conviction by the 'court' for the said offence imprisonment may follow."
In view of the above decision, the adjudication proceedings under the FERA is not a prosecution of an accused for commission of an offence in a criminal court, and the penalty imposed cannot be termed as fine. Hence, the

imposition of penalty cannot be deemed to be a disqualification, and thus it would not constitute a cause of action.
34. Apart from all the above, paragraph 21 of the election petition reads:
"For the above reasons, the election of the 1st respondent is liable to be set aside.

(i) Under Sec.100(1)(a) of the Representation of People Act, 1951, as the returned candidate was not qualified to be chosen to fill the seat...."

The said averment would indicate that the election of the petitioner/first respondent was sought to be set aside under S.100(1)(a) of the Representation of People Act, 1951 as the returned candidate was not qualified. Hence "not qualified" should only r efer to Article 84 of the Constitution of India, which reads:

"84. Qualification for membership of Parliament:- A person shall not be qualified to be chosen to fill a seat in Parliament unless he-

(a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule."

It is pertinent to note that Article 102 of the Constitution reads as follows:

"102. Disqualification for membership:- (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament-

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State."

But, Sec.100(1)(a) of the Representation of People Act, 1951 reads thus:

"100. Grounds for declaring election to be void:- (1) Subject to the provisions of sub-section (2) if the High Court is of opinion-

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963)."

Thus, the ground urged by the election petitioner and stated supra, speaking only about the petitioner/first respondent being not qualified, does not refer to any disqualification under Article 102(1)(d) of the Constitution of India. Nowhere the election petitioner has challenged the election alleging any invalidity of the petitioner/first respondent in having been elected as the Member of Parliament on any one of the grounds stated in Article 84 of the Constitution. Therefore, the relief sought for as stated above, is not supported by the requisite and necessary pleadings.

35. Relying on a decision of the Apex Court reported in 2000(2) SCC 294, the learned Senior Counsel for the election petitioner would submit that the court cannot dissect the pleadings into several parts and consider whether each one of them discloses a cause of action; that the election petition has to be considered as a whole; and that there cannot be a partial rejection of the election petition. More explicit it is, on a

reading of the whole election petition, that it lacks necessary material facts, which would constitute the cause of action; and that the facts contained in the election petition would not constitute any cause of action.

36. The contention of the election petitioner's side that a reasonable cause of action would mean a cause of action with some chances of success, and so long as the claim discloses some causes of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed, is not a ground for striking it out, cannot be countenanced. Attractive though the submissions of the learned Senior Counsel for the election petitioner may be, they cannot be an answer to the non-compliance of the mandatory requirements contemplated under the said provision of law, nor can they cure the defect. As seen above, the election petition lacks material facts, and thus it does not disclose any cause of action fit to be decided by the court. The election petition suffers from the vice of not satisfying the mandatory requirement of pleading material facts, as required by Sec.83(1)(a) of the Representation of People Act, 1951.

37. It is quite apparent from the discussions made above and it would be suffice to say also, after a careful reading of the election petition and hearing of the respective learned Senior Counsel, that the election petition suffers from the incurable defect by not satisfying the mandatory requirements of pleading material facts as required by Sec.83(1)(a) of the Representation of People Act, 1951, and the court is also satisfied that the election petition does not satisfy the requirement which is mandatory and also the judicial decisions stated supra. It could be well stated that the election petition lacks the material facts, but is vague and bald in the allegations made, and thus, the pleadings in the election petition do not disclose any cause of action, necessitating the court to try the same. Mandatory provisions of the Act speaking of the pleadings and procedures for challenging an election must be strictly followed, and if there be any deviation from or non compliance with the same, the court has no other alternative than to reject the election petition. Therefore, in view of the reasons stated and discussions made above and the judicial pronouncements, stated supra, it has to be necessarily held that the election petitioner, the first respondent herein has not made out any ground to try the election petition, which lacks material particulars; and that the grounds urged by him are devoid of cause of action. The instant application has got to be allowed, and thereby the election petition, not satisfying the requisite and relevant provisions of law, is liable to be rejected at the pre-trial stage itself.

38. In the result, this original application is allowed. Consequently, Election Petition No.1 of 2000 is rejected. In the circumstances, there shall be no order as to the costs. In view of the rejection of the election petition, connected O.A.Nos.

37, 38 and 39 of 2002 are dismissed.

Index: yes/no -3-2002
Internet: yes/no
nsv/

M.CHOCKALINGAM, J.

Pre-delivery order in
O.A.No.18 of 2002
in
ELEC.P.No.1 of 2000
Dt: 04-3-2002